



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

Date:

OCT - 5 2001

Contact Person:

Identification Number:

Telephone Number:

NO POSTST RECEIVED
Refers to District

Date

Surname

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Employer Identification Number:

Dear Sir or Madam:

We have considered your application for recognition of exemption from federal income tax under section 501(a) of the Internal Revenue Code as an organization described in section 501(c)(4). Based on the information submitted, we have concluded that you do not qualify for exemption under that section. The basis for our conclusion is set forth below.

The information submitted indicates that you were incorporated on [REDACTED] under the laws of the state of [REDACTED]. Your purpose, as represented in your restated Bylaws, is "to own, repair, maintain and manage the common area parcels, and the facilities located thereon, within that certain real estate project located in the County of [REDACTED], state of [REDACTED] and commonly referred to as [REDACTED], to maintain individual lots to the extent and in the manner more particularly described in the declaration, enforce the governing documents of the [REDACTED] development and to otherwise enhance and promote the use and enjoyment of common areas and common facilities by the owners in common."

In furtherance of your purpose, you conduct the following activities: (1) Maintenance of open space and fences; (2) Road maintenance; (3) Security; (4) Recreational activities; (5) Water and water treatment activities.

You have represented that [REDACTED] consists, presently, of [REDACTED] residential lots [REDACTED] at build-out), comprising approximately [REDACTED] acres and [REDACTED] residents (approximately [REDACTED] at build-out), and common areas consisting of [REDACTED] miles of roads and sidewalks ([REDACTED] miles at build-out), parks, lakes, entry gates, administrative buildings and street light poles. Membership is automatic for all owners of a lot within the association. Each member is entitled to one vote for each lot that is owned.

You have further represented that public access to [REDACTED] is limited by control gates at major access points; that both gates are attended twenty-four hours a day, seven days a week by security personnel; and that access is granted to all members, their families and guests, tradesmen, the postal service, contractors and potential home buyers and all others with

a business purpose within the community. Those without a specific reason to enter are denied access.

Your primary sources of income include member assessments, investment income, and revenue for cable television services provided to members.

Section 501(c)(4) of the Code provides for the exemption from Federal income tax of civic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare.

Section 1.501(c)(4)-1(a)(2) of the Income Tax Regulations states that an organization is operated exclusively for the promotion of social welfare if it is primarily engaged in promoting in some way the common good and general welfare of the people of the community. An organization coming within the scope of this section is one that is operated to bring about civic betterment and social improvements.

Rev. Rul. 74-99, 1975-1 C.B. 132, holds that in order for a homeowner association to qualify for exemption under section 501(c)(4) of the Code, it (1) must serve a "community" which bears a reasonable recognizable relationship to an area ordinarily identified as governmental, (2) it must not conduct activities directed to the exterior maintenance of private residences, and (3) the common areas or facilities it owns and maintains must be for the use and enjoyment of the general public.

The determination of whether an organization qualifies for exemption from federal income tax under section 501(c)(4) of the Code is made by carefully scrutinizing the organization's activities. To be exempt, the activities of the organization must address a bona fide community need.

Information submitted by you indicates that the activities conducted by your organization would likely satisfy the requirements of numbers one and two of Rev. Rul. 74-99. However, the information provided shows that you clearly do not meet the third requirement, which states that the common areas and facilities owned and maintained by you must be for the use and enjoyment of the general public.

Public access to the areas you maintain is limited by control gates, which are attended twenty-four hours a day, seven days a week, by security personnel. Access is restricted to members, their families and guests. Members of the general public do not have access to areas you maintain.

The presence of the guarded gates, indicates that you have as your primary activity and objective the maintenance of a private residential community of an exclusive nature. The use of guarded gates shows that this activity is designed to restrict access, which largely serves to enhance or preserve the private property interests of your members, rather than to provide access to your common areas and facilities for the use and enjoyment of the general public.

Because your primary activity is the protection and preservation of the private property

[REDACTED]

interests of your members rather than the promotion of social welfare, you are not promoting social welfare within the meaning of section 501(c)(4) of the Code.

Accordingly, you do not qualify for exemption as an organization described in section 501(c)(4) of the Code and you must file federal income tax returns.

You have a right to protest this ruling if you believe it is incorrect. To protest, you should submit a statement of your views to this office, with a full explanation of your reasoning. This statement, signed by one of your officers, must be submitted within 30 days from the date of this letter. You also have a right to a conference in this office after your statement is submitted. You must request the conference, if you want one, when you file your protest statement. If you are to be represented by someone who is not one of your officers, that person will need to file a proper power of attorney and otherwise qualify under our Conference and Practices Requirements.

If we do not hear from you within 30 days, this ruling will become final and a copy will be forwarded to the Ohio Tax Exempt and Government Entities (TE/GE) office. Thereafter, any questions about your federal income tax status should be directed to that office, either by calling 877-829-5500 (a toll free number) or sending correspondence to: Internal Revenue Service, TE/GE Customer Service, P.O. Box 2508, Cincinnati, OH 45201.

When sending additional letters to us with respect to this case, you will expedite their receipt by using the following address:

Internal Revenue Service
[REDACTED] T:EO:RA:T:4, RM 6236
1111 Constitution Ave. N.W.
Washington, D.C. 20224

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely,

(signed) Gerald V. Sack

Gerald V. Sack
Manager, Exempt Organizations
Technical Group 4

cc: [REDACTED]

[REDACTED]

[REDACTED]